

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

ALANA BOYD

Petitioner.

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CHARGE NO.: 2009CF0009
EEOC NO.: 21BA82387
ALS NO.: 10-0146

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Alana Boyd's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge 2009CF0009; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On July 2, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Bank Financial FSB ("the Bank") subjected her to sexual harassment in violation of Section 2-102(D) of the Illinois Human Rights Act ("Act"). On January 21, 2010, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On February 24, 2010, the Petitioner filed this timely Request.
2. The Petitioner was employed by the Bank as a Client Representative.
3. On June 16, 2008, one of the Bank's clients made loud and demeaning remarks of a sexual nature to the Petitioner; made offensive sexual remarks about the Petitioner's body; and threw objects aimed at the Petitioner's breasts and buttocks.
4. On June 17, 2008, the Petitioner verbally complained to her supervisor, who was the Bank's Branch Manager, about the client's conduct.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. During a telephone conversation on June 18, 2008, the client admitted to the Branch Manager that he had engaged in the conduct.
6. On June 19, 2008, the Petitioner sent written complaints via email to the Branch Manager and the Bank's Regional Manager about the June 16th incident.
7. On June 30, 2008, the Regional Manager met with the client. The Regional Manager informed the client that any further incidents would result in the Bank closing his accounts. This conversation was memorialized in a letter to the client from the Regional Manager dated July 8, 2008. In addition, the Bank informed the Petitioner that she was no longer required to service the client; the Bank took steps to limit the client's need to come to the Bank's physical location, and the Bank hired a security guard to work on the nights that the Petitioner had to close the Bank.
8. In her charge the Petitioner alleged the Bank's client sexually harassed her approximately twice per week from late 2007 to July 1, 2008. The Petitioner alleged that when she told the Branch Manager about the client's conduct of June 16, 2008, the Branch Manager was initially resistant to take action on her complaint. The Petitioner further alleged the Bank also did nothing after the client referred to her as a "bitch" on July 1, 2008. The Petitioner alleged the Bank failed to provide her with a work place free of sexual harassment.
9. In her Request, the Petitioner argues that the Bank was aware of the sexual harassment prior to June 2008. The Petitioner further argues that the dismissal of the charge for lack of substantial evidence was erroneous because the parties offered conflicting testimony and the conclusions drawn by the Respondent's investigator were based on credibility determinations.
10. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent determined there was no evidence the Petitioner had reported any instances of sexual harassment to the Bank prior to June 17, 2008. Once the Petitioner reported the client's harassment, the Respondent argues the Bank took reasonable corrective measures, and thereafter the Petitioner was no longer sexually harassed by the client.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Petitioner seeks to hold the Bank vicariously liable for the client's sexual harassment. Under the Act, the Bank may be liable for sexual harassment of its employees by non-employees only if the Bank becomes aware of the conduct and fails to take reasonable corrective measures. See 775 ILCS 5/2-102(D). The evidence shows that following the Petitioner's complaint on June 17th, the Bank took steps to stop the sexual harassment and to eliminate the need for the Petitioner to have any contact with the client if and when he came to the Bank to conduct business. The Commission concludes the Employer took reasonable corrective measures once it was made aware of the client's conduct

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Bank Financial FSB, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 13th day of October 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box